

To whom it may concern,

February 9, 2015

Regarding: Senate Bill 25 (SB 25) amending the Unit Ownership Act

This letter is written on behalf of the undersigned title insurance underwriters who issue approximately 98% of the title insurance policies issued in the state of Montana as of the latest industry data.

We wish to explain our concerns about SB 25 and why we cannot support it and are not presently in a position to offer amendments for this legislative session.

AMENDING A DECLARATION IS ONLY ONE STEP AND DOES NOT CREATE OR ALTER OWNERSHIP:

SB 25 approaches converting condominium units to townhomes as if amending the Declaration causes it to happen as a single step. But converting to townhome status involves expanding the ownership boundaries of units in all directions to include structural elements, land below and air above. Like any other amendment to property boundaries, neighbors must exchange deeds and mortgages must be amended to match the new boundaries.

Almost all condominiums constructed in a townhome style consist of ownership of the airspace within the structure. The structural components, the land below and air above are common elements owned by all unit owners in undivided interests and encumbered by their various mortgages. The land under a unit is almost never designated as a limited common element appurtenant to the unit.

SB 25 contains a provision that the conversion to townhomes *"is effective upon recording the amended declaration"*. Like any other adjustment of ownership boundaries, it cannot be fully effective until appropriate conveyances occur to cause ownerships to match the new boundaries. This provision can make entire projects unmarketable during the time period it takes to obtain all deeds and mortgage amendment documents. The effective date of the conversion should be when both the Declaration has been amended and all deeds and mortgage amendments have been obtained.

We know from past policy claims experience that adjusting ownership boundaries without appropriate deeds and mortgage amendments results in future disputes and litigation, particularly when lenders foreclose using their original legal descriptions. Because SB 25 does not address steps in the conversion process other than amending the Declaration, we would expect an increase in such disputes and litigation in projects which try to convert to townhome status without obtaining deeds and mortgage modifications from 100% of owners and lenders.

CONSTITUTIONALITY ISSUES IF ALLOWED TO APPLY TO EXISTING CONDOMINIUMS:

SB 25 attempts to allow a certain percentage of owners to amend other owners' boundaries and lenders' mortgages without their consent, and without deeds or recorded mortgage amendments from all parties to establish ownership in the public record. SB 25 allows amendments to Declarations that alter contractual rights in ways the original Declaration and Montana Code didn't contemplate at the

time the owners and lenders acquired their interests. If SB is allowed to apply retroactively to existing condominiums we anticipate court challenges relating to both issues, altering ownership boundaries and altering contractual rights without consent of all owners and lenders. Other states who attempted retroactive legislation relating to condominiums have seen such court challenges.

Title insurers cannot be expected to voluntarily offer coverage over this issue and pay for future litigation. Either entire condominium projects will become uninsurable or title companies will show exceptions from coverage which will not be palatable to prospective purchasers and lenders, impairing the marketability and values of the properties. The purpose of SB 25 is to improve marketability and values, but we see it as potentially having the reverse effect.

EXISTING LAWS ALREADY WORK:

If all unit owners and lenders agree to a conversion, there is no need for SB 25. There is nothing in the current Unit Ownership Act which prevents all parties from converting from condominium to townhome ownership by amending the declaration, exchanging deeds, and amending mortgages.

We have heard it said no one would contest an amendment to townhome status since it would improve property values. But if that were true there should be no problem with obtaining consents, deeds and mortgage amendments. We recognize obtaining consents from lenders for boundary changes can sometimes be difficult and time consuming. But we are not aware of any potential mechanism to alter their rights without running into constitutionality issues.

Although not mentioned above, involuntary liens, including judgment liens, also impact title to units and must be dealt with in the same manner as mortgages. Those liens which arise under state law could be an appropriate subject of new legislation, although some of the same constitutionality issues exist if applied retroactively. Liens created under federal law present a separate problem.

IN CONCLUSION:

Our industry is strongly supportive of a healthy real estate market and legislation which enhances the value and marketability of real property. We recognize the benefits conversion to townhome status could have in making it easier to obtain mortgages and increase property values. But we know the title to properties we insure has to be based on proper transfers of ownership and releasing prior encumbrances in ways in which future challenges to ownership will not exist. This has always been the approach of Montana's laws relating to real property ownership. SB 25 may induce more condominium associations to amend declarations for conversion to townhome status, thinking the conversion is effected through the process of amending the Declaration without addressing the necessary steps to change all property ownership rights, making more projects unmarketable. It will not improve the marketability of any projects which have previously started, but failed to complete, the process of converting to townhomes. We believe SB 25 can cause more projects to be open future litigation.

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